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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,474	01/31/2004	Michael Eugene Frasier	6301P0130US	5366

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THE LAW OFFICE OF RANDALL T. ERICKSON, P.C.
425 WEST WESLEY STREET, SUITE 1
WHEATON, IL 60187

EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/769,474

Applicant(s)

FRASIER, MICHAEL EUGENE

Examiner

Nathan S Mammen

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-4,7-9,11 and 12 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,059,047 to Schimke.

The Schimke '047 patent discloses a seed tube guard (4) for a seed tube (16). The seed tube guard is mounted to a frame (3), which is in turn mounted to a seed planting machine. The guard comprises a body (2, 4) for fronting the seed tube. The guard comprises a first connection configuration (see Figs 1 and 3 – bolts holes – bolts **not** in place) fixed to the body for mounting the guard to the frame member and a second connection configuration (see, e.g., Fig. 2 – bolts 9 in place). The connection configurations are mutually engaged by hand (i.e., the bolts are inserted, and the nuts can be threaded by hand).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,059,047 to Schimke.

Art Unit: 3671

The Schimke '047 patent discloses the claimed invention, as stated in paragraph 4 above, including that the guard is comprised of steel. See Col. 3, line 4. What the Schimke '047 patent does not disclose is that the frame member is composed of iron. However, it would have been obvious matter of design choice to one having ordinary skill in the art at the time the invention was made to construct the frame member of iron, since the examiner takes OFFICIAL NOTICE that iron and its alloys are the typical material of construction for those parts.

Response to Arguments

5. Applicant's arguments filed 5/10/05 have been fully considered but they are not persuasive.

Amended claims 1 and 6 remain sufficiently broad that the Schimke '047 patent anticipates. In claim 1, Applicant recites a "first connection configuration formed in unitary fashion with said body for mounting said guard to said frame member." As now identified, the bolt holes in the guard body (2) are formed in unitary fashion with the body. Furthermore, these bolts holes exists solely for mounting said guard to said frame member. Thus, the boltless bolt holes are a first connection configuration formed in unitary fashion with the body for mounting the guard (i.e., with the bolts) to the frame member.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3671

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

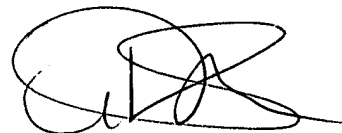
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (571) 272-6991. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (571) 272-6998. The fax number for this Group is (571) 273-8300.

Thomas B. Will
Supervisory Patent Examiner
Group 3600

NSM
7/19/05

Nathan S. Mammen



HEATHER SHACKELFORD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600